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Bar Council v Ong Keh Keong

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COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-02(A)-582–04 OF 2023
NANTHA BALAN, AZMI ARIFFIN AND AHMAD KAMAL JJCA
3 JANUARY 2025

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Legal Profession — Disciplinary proceedings — Disciplinary committee (DC)/Disciplinary board (DB) — DC failed to include several documents crucial to accused lawyer's defence when it submitted its report to DB — Whether this rendered DC's report to DB invalid and a nullity — Whether DB's decision based on DC's report was thereby compromised and had to be set aside — Whether rr 18(12) and 19 of Legal Profession (Disciplinary Proceedings) Rules 2017 requiring DC to submit complete record of proceedings to DB when it submitted its report, was mandatory

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The respondent ('OKK') was a practising advocate and solicitor. When four law graduates applied to undergo pupillage in his firm, OKK issued them with letters of appointment which, inter alia, contained a term that their pupillage could be terminated by either party serving on the other two months' notice of termination or by paying two months' salary in lieu of notice. On receiving complaints that OKK had demanded payment of two months' salary in lieu of notice from the pupils and had filed civil claims for recovery of same against two of them, the appellant wrote to OKK stating that his actions had breached s 94(3)(o) of the Legal Profession Act 1976 ('the LPA'). OKK did not respond to the appellant's letter. The appellant thereafter initiated disciplinary proceedings against OKK under ss 94(3)(k) and (o) of the LPA. The disciplinary committee ('DC'), which investigated the appellant's complaint, unanimously found OKK guilty and recommended, inter alia, that he be fined RM5,000. The disciplinary board ('DB') agreed and ordered OKK to pay the fine within a month. Pursuant to s 103E of the LPA, OKK appealed to the High Court to set aside the DB's decision on the grounds that: (a) both the DC and DB had ignored a magistrate's court's decision allowing his claim for RM3,600 (being two months' salary in lieu of notice) against one of the four pupils after holding that the letter of appointment did not constitute a contract of employment; (b) the DC and DB erred in holding that the two-month notice requirement contravened the LPA, and that; and (c) the RM5,000 fine was disproportionate to the nature of the complaint. OKK also contended that he was severely prejudiced when the DC's report to the DB failed to contain various documents ('the omitted documents') that formed his defence, namely, his statement of defence, bundle of documents and the statements of witnesses examined by the DC. OKK argued that this not only rendered the DC's report

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to the DB invalid and a nullity, but adversely affected the DB's decision against him. The High Court agreed with OKK and allowed his appeal. It set aside the decisions of the DC and DB holding that the DC's failure to comply with rr 18(12) and 19 of the LPA (Disciplinary Proceedings) Rules 2017 was fatal. These provisions required the DC to make a complete record of the proceedings, including all evidence that had been tendered, and to submit the same together with its report, to the DB. The court held that that the DC's failure to include the omitted documents in its report to the DB had compromised the DB's decision-making process, thus rendering the DB's decision in the matter an error of law that had to be set aside. Dissatisfied with the decision, the appellant filed the instant appeal.

Held, unanimously dismissing the appeal and affirming the High Court's decision:

(1) The DC's failure to submit to the DB a complete record of the proceedings, which included the omitted documents, rendered the DC's report to the DB invalid and a nullity (see para 43).

(2) Rules 18(12) and 19 of the LPA (Disciplinary Proceedings) Rules 2017 were mandatory provisions that the DC had to comply with. In the instant case, the entire defence adduced by OKK, being the omitted documents, were inexplicably left out of the DC's report to the DB. Rule 19 specifically required the DC to compile a complete record of the proceedings, consisting of all evidence that had been tendered, and to submit the same together with its report to the DB. The DC's failure to include the omitted documents in its report raised the question of whether the DB had the benefit of a full picture of the nature of OKK's defence when it arrived at its decision (see paras 25–26, 38–39 & 42).

(3) The omitted documents were relevant and important to OKK's defence. Their exclusion from the DC's report to the DB made it quite clear that the DB had never seen or considered the omitted documents when it made its finding of liability against OKK. The DB's decision-making process had been compromised and there was procedural unfairness to OKK. The High Court had acted correctly in setting aside the DB's order (see paras 27–30 & 44–45).

[Bahasa Malaysia summary

Responden ('OKK') adalah seorang peguambela dan peguamcara yang sedang beramal. Apabila empat graduan undang-undang memohon untuk menjalani latihan di firmanya, OKK mengeluarkan surat pelantikan kepada mereka yang, antara lain, mengandungi terma bahawa latihan mereka boleh ditamatkan oleh mana-mana pihak dengan menyampaikan dua bulan notis penamatan kepada pihak lain atau dengan membayar gaji dua bulan sebagai ganti notis. Apabila menerima aduan bahawa OKK telah menuntut pembayaran gaji dua bulan

sebagai ganti notis daripada pelatih dan telah memfailkan tuntutan sivil untuk mendapatkannya semula terhadap dua daripada mereka, perayu menulis kepada OKK menyatakan bahawa tindakannya telah melanggar s 94(3)(o) Akta Profesion Undang-Undang 1976 ('APU'). OKK tidak menjawab surat perayu. Perayu selepas itu memulakan prosiding tatatertib terhadap OKK di bawah ss 94(3)(k) dan (o) APU. Jawatankuasa tatatertib ('DC'), yang menyiasat aduan perayu, sebulat suara mendapati OKK bersalah dan mengesyorkan, antara lain, supaya dia didenda RM5,000. Lembaga disiplin ('DB') bersetuju dan mengarahkan OKK membayar denda dalam tempoh sebulan. Menurut s 103E APU, OKK merayu kepada Mahkamah Tinggi untuk mengetepikan keputusan DB atas alasan bahawa: (a) kedua-dua DC dan DB telah mengabaikan keputusan mahkamah majistret yang membenarkan tuntutannya untuk RM3,600 (iaitu gaji dua bulan sebagai ganti notis) terhadap salah seorang daripada empat pelatih selepas memutuskan bahawa surat pelantikan itu bukan kontrak pekerjaan; (b) DC dan DB terkhilaf kerana berpendapat bahawa keperluan notis dua bulan melanggar LPA, dan bahawa; dan (c) denda RM5,000 adalah tidak seimbang dengan sifat aduan. OKK juga berhujah bahawa dia sangat diprejudiskan apabila laporan DC kepada DB gagal mengandungi pelbagai dokumen ('dokumen yang ditinggalkan') yang membentuk pembelaannya, iaitu pernyataan pembelaannya, ikatan dokumen dan penyataan saksi yang diperiksa oleh DC. OKK berhujah bahawa ini bukan sahaja menyebabkan laporan DC kepada DB tidak sah dan terbatal, tetapi menjejaskan keputusan DB terhadapnya. Mahkamah Tinggi bersetuju dengan OKK dan membenarkan rayuannya. Ia mengetepikan keputusan DC dan DB dengan memutuskan bahawa kegagalan DC untuk mematuhi rr 18(12) dan 19 Kaedah-kaedah Profesion Undang-Undang (Prosiding Tatatertib) 2017 adalah memudaratkan. Peruntukan ini memerlukan DC membuat rekod lengkap prosiding, termasuk semua keterangan yang telah dikemukakan, dan menyerahkannya bersama-sama laporannya, kepada DB. Mahkamah memutuskan bahawa kegagalan DC untuk memasukkan dokumen yang ditinggalkan dalam laporannya kepada DB telah menjejaskan proses membuat keputusan DB, sekali gus menjadikan keputusan DB dalam perkara itu khilaf undang-undang yang harus diketepikan. Tidak berpuas hati dengan keputusan itu, perayu memfailkan rayuan semasa.

Diputuskan, sebulat suara menolak rayuan dan mengesahkan keputusan Mahkamah Tinggi:

(1) Kegagalan DC untuk menyerahkan kepada DB rekod lengkap prosiding, yang termasuk dokumen yang ditinggalkan, menyebabkan laporan DC kepada DB tidak sah dan terbatal (lihat perenggan 43).

(2) Peraturan 18(12) dan 19 Kaedah-Kaedah Profesion Undang-Undang (Prosiding Tatatertib) 2017 adalah peruntukan mandatori yang DC perlu patuhi. Dalam kes semasa, keseluruhan pembelaan yang dikemukakan oleh OKK, iaitu dokumen yang ditinggalkan, secara tidak

dapat dijelaskan telah ditinggalkan daripada laporan DC kepada DB. Peraturan 19 secara khusus menghendaki DC untuk menyusun rekod lengkap prosiding, yang terdiri daripada semua keterangan yang telah dikemukakan, dan menyerahkannya bersama-sama dengan laporannya kepada DB. Kegagalan DC untuk memasukkan dokumen yang ditinggalkan dalam laporannya menimbulkan persoalan sama ada DB mendapat manfaat gambaran penuh tentang sifat pembelaan OKK apabila ia tiba pada keputusannya (lihat perenggan 25–26, 38–39 & 42).

(3) Dokumen yang ditinggalkan adalah relevan dan penting untuk pembelaan OKK. Pengecualiannya daripada laporan DC kepada DB menunjukkan dengan jelas bahawa DB tidak pernah melihat atau mempertimbangkan dokumen yang ditinggalkan apabila ia membuat dapatan liabiliti terhadap OKK. Proses membuat keputusan DB telah terjejas dan terdapat ketidakadilan prosedur terhadap OKK. Mahkamah Tinggi telah bertindak dengan betul dalam mengetepikan perintah DB (lihat perenggan 27–30 & 44–45).]

Cases referred to

Chou Ka Ping v Liow Ah Chiew [2013] MLRHU 1165, HC (refd)
Majlis Peguam Malaysia v Chou Ka Ping [2015] 3 CLJ 28; [2015] 3 MLRA 21, CA (refd)
Ramanathan a/l Velu @ Murugai v Jeganathan a/l S Periasamy & Anor (Majlis Peguam Malaysia, intervener) [2016] 4 MLJ 65; [2016] 4 MLRA 427; [2016] CLJU 304, CA (refd)
Ramasamy a/l Amaippan v Kwan Lee Pin (Majlis Peguam Malaysia, intervener) [2018] 6 MLJ 528; [2017] MLRAU 232; [2018] 3 CLJ 336; [2017] 4 AMR 621, CA (refd)

Legislation referred to

Legal Profession Act 1976 ss 12(1), (2), 94(3)(k), (3)(o), 103E
Legal Profession (Disciplinary Proceedings) (Investigating Tribunal and Disciplinary Committee) Rules 1994 r 24
Legal Profession (Disciplinary Proceedings) Rules 2017 rr 18(12), 19

Appeal from: *Ong Keh Keong v Lembaga Tatatertib Peguam-Peguam & Anor* [2024] MLJU 1643 (High Court, Kuala Lumpur)

Lai Chee Hoe (together with Angeline Ang Mei Fong and Deyvinah a/p Ganesalingam) (Chee Hoe & Assoc) for the appellant.
Ong Keh Keong (Ong Partnership) for the respondent.

Ahmad Kamal JCA:

INTRODUCTION

[1] This is an appeal against the judgment of the learned High Court judge ('HCJ') dated 22 March 2023 allowing the respondent's, Mr Ong Keh Keong's ('OKK') appeal in setting aside the disciplinary board's ('DB') order issued by the appellant, ('the Bar Council') dated 18 January 2020 which imposed a fine of RM5,000 on OKK.

[2] Having heard the appeal, examined the appeal records and considered the submissions by parties, we unanimously decided to affirm the decision of the learned HCJ and therefore, dismiss the appeal, for the reasons which are set out herein.

BACKGROUND FACTS

[3] OKK is a practising advocate and solicitor. On 15 March 2017, the Bar Council issued a letter to OKK concerning complaints made by a few individuals against OKK ('the letter').

[4] The individuals are Nurhani bt Mohammad Shukri ('Nurhani'), Vishnu Shan ('Vishnu'), Wan Hilmi Wan Hamdi ('Hilmi') and Sharifah Dyana Baizura bt Syed Azmi Ahmad ('Sharifah') (collectively referred to as 'the individuals').

[5] The individuals, who were qualified persons under the Legal Profession Act 1976 ('the LPA'), applied to OKK's firm, Messrs Ong Partnership, to undergo and complete their pupillage period and thereafter be admitted to the Malaysian Bar.

[6] OKK issued separate letters of appointment to the said individuals, which contain similar terms and conditions. They were duly agreed upon and acknowledged by the said individuals. One of the terms of the letter of appointment states that:

> In addition, the Firm reserves the right to compensation from you for breach of this letter of appointment.

[7] The impugned term in the letter of appointment, which the Bar Council took umbrage with, is:

> Your pupillage may be terminated by either party serving the other, two (2) month's notice of such intention or paying two (2) month's allowance in lieu of notice.

[8] In the said letter to OKK, the Bar Council said that they were informed that OKK had demanded payment of two months' salary in lieu of two months' notice from the individuals. OKK had also proceeded with civil claims against Vishnu and Hilmi.

[9] The Bar Council took the position that the terms and conditions imposed by OKK in the letter issued to the individuals to enable them to undergo the pupillage was prejudicial to the rights of the individuals.

[10] After having referred to s 12(1) and (2) of the LPA, the Bar Council informed OKK that it was of the view that pupillage is not to be equated with 'employment'. The Bar Council then proceeded to state:

> Such onerous and unfair terms in the letter of appointments are acts that may be in breach of s 94(3)(o) of the Legal Profession Act 1976.

[11] There was no response from OKK arising from the said letter.

THE COMPLAINT

[12] On 9 January 2018, the Bar Council issued a letter of complaint to the Director of the DB. The letter of complaint reiterated the factual background as contained in the letter to OKK dated 15 March 2017. It concluded that the Bar Council was of the view that OKK might be guilty of:

(a) s 94(3)(k) of the LPA, specially r 14.01(2) of the Rules and Rulings of the Bar Council due to failure to reply to the Bar Council's letter dated 15 March 2017; and

(b) s 94(3)(o) of the LPA for imposing terms of contract upon OKK's pupil(s) in serving their pupillage.

[13] On 15 October 2018, a disciplinary committee ('DC'), chaired by Mr Jacob Rabindranath, was appointed to investigate the complaint. At the conclusion of the hearing of the complaint on 28 December 2018, where OKK was present and testified, the DC made the following finding:

> The committee is unanimous in its findings that the respondent has breached both the complaints as stated therein. The respondent was questioned vigorously by the committee, and was unable to provide a reasonable and/or plausible explanation for his actions. The DC believes the gravity of the respondent's actions has tarnished the BC, and corollary the punity ought to be exemplary. Accordingly, the DC recommends (a) restitution — that the pupils be repaid the full sum claimed and paid the [by] pupils to the respondent, and (b) fine — a fine of RM5000.00 be paid by the respondent.

[14] The DB convened a meeting on 18 January 2020 to consider the finding of the DC report. The finding of the DC was affirmed in the following manner ('the DB's order'):

> In the exercise of the powers conferred by Section 103D of the Legal Profession Act 1976 (the Act), the Disciplinary Board having on 18 January 2020 considered the report made by the Disciplinary Committee on the complaint against the Respondent, affirmed the Disciplinary Committee's finding of liability and recommendation on punishment but rejected the recommendation on punishment for restitution, instead IT IS HEREBY ORDERED that the Respondent do pay a fine of Ringgit Malaysia Five Thousand (RM5,000) only payable to the Discipline Fund within one (1) month from the date of this Order AND IN DEFAULT THEREOF Section 103(1) of the Act shall apply.

IN THE HIGH COURT

[15] Aggrieved, OKK filed an appeal vide under s 103E of the LPA by way of originating summons ('OS'). In this OS, OKK sought to set aside the DB order. The grounds of the application, as stated in the OS, can be summarised as follows:

(a) in arriving at its finding, the DC and DB had ignored the ruling made by the Magistrates Court Kuala Lumpur vide Summons No A72NCVC-4315–09 of 2015 that the letter of appointment did not constitute a contract of employment. In that case, the magistrates court had allowed OKK's claim against Vishnu for the sum of RM3,600 being two months' salary in lieu of notice;

(b) the DC and DB had erred in their respective ruling in holding that the two-month notice requirement was in contravention of the LPA; and

(c) the DC and DB had erred in imposing the RM5,000 fine against OKK, which was disproportionate to the nature of the complaint.

[16] OKK submitted that there was a breach of the principles of natural justice in the conduct of the complaint against him. According to OKK in para 4 of his supplementary affidavit, when he received that record of the inquiry from the DC, he discovered that there were various documents not included in the DC report, namely, his statement of defence, bundle of documents, witnesses statements and witness statement of Nurhani ('omitted documents').

[17] OKK submitted that without the omitted documents the DB could not have been said to have directed its mind when considering the DCs report.

[18] In short, OKK contended that the failure of the DC to compile and

submit a complete report would render the DC report invalid and therefore a nullity.

[19] On 22 March 2023, the learned HCJ allowed the OS and ordered the findings of the DC and DB to be set aside with no order as to costs.

FINDINGS OF THE LEARNED HIGH COURT JUDGE

[20] The learned HCJ found, among others:

(a) all the documentary evidence tendered before the DC per r 19 of the Legal Profession (Disciplinary Proceedings) Rules 2017 ('the 2017 Rules') including the omitted documents, must be part of the report to the DB. The High Court rejected the Bar Council's contention that the omitted documents are not legally required to be included in the DC report;

(b) the failure of the DC to include the omitted documents in its report to the DB raised the question of whether the DB had the benefit of a full picture of the nature of OKK's defence in arriving at its decision;

(c) for the reasons aforesaid, there was non-compliance with the mandatory requirement of r 19 of the 2017 Rules. The failure compromised the decision-making process of the DB. This failure amounted to an error of law leading to a decision, as in *Ramasamy a/l Amaippan v Kwan Lee Pin (Majlis Peguam Malaysia, intervener)* [2018] 6 MLJ 528; [2017] MLRAU 232; [2018] 3 CLJ 336; [2017] 4 AMR 621 (CA), untenable in law;

(d) such error on the part of the DC and DB warranted an appellate intervention; and

(e) thus, the OS is allowed to the extent that the findings of the DC and DB are hereby set aside. There shall be no order as to costs.

[21] Dissatisfied with the decision, the Bar Council now appeals to the Court of Appeal.

THE APPEAL

[22] The issues present before this honourable court are as follows:

(a) whether the learned HCJ had erred in law for setting aside the DB order dated 18 January 2020 solely on a technical basis, ie, that the DC report furnished to the respondent was incomplete;

(b) whether the learned HCJ did not consider the merits of the DB order in relation to the respondent's conduct as an advocate and solicitor, and

whether the DB order was rightfully made against the respondent;

(c) whether the learned HCJ failed to appreciate the role of the court in relation to orders, findings and decisions made by the DB;

(d) whether the learned HCJ had erred in law in relation to the scope of the LPA in imposing fines on an advocate and solicitor;

(e) whether the learned HCJ had erred in law in holding that the respondent's fundamental rights had been infringed/breached;

(f) whether the learned HCJ has misapplied the principles in the case of *Chou Ka Ping v Liow Ah Chiew* [2013] MLRHU 1165 and the case of *Ramasamy*; and

(g) whether the learned HCJ had erred in law in holding that the DB order could not be held up in law and thus, should be set aside.

OUR FINDINGS

[23] OKK complained that the DC had not complied with rr 18(12) and 19 of the 2017 Rules in that several pieces of documents submitted by OKK were not recorded in the DC report which was prepared after the disciplinary hearing was conducted on 6 December 2018.

[24] The learned HCJ in hearing the appeal agreed with OKK's submission and held that the Bar Council had indeed breached rr 18(12) and 19 of the 2017 Rules and ordered that the DB order to be set aside.

[25] For ease of reference, the provisions of rr 18(12) and 19 of the 2017 Rules is reproduced below:

> 18 *Proceedings of the Disciplinary Committee*
>
> (12) *The Disciplinary Committee shall make a record of the evidence given to it.*
>
> *Record of proceedings before Disciplinary Committee*
>
> 19 The Disciplinary Committee *shall compile a record of proceedings consisting of all evidence including documentary evidence tendered and shall submit the record of the proceedings together with its report under rule 21 to the Disciplinary Board*. (Emphasis added.)

[26] Having read the above provisions, we are of the view, that the word 'shall' denotes that this is a mandatory requirement for the DC:

(a) to make a record of the evidence given to it; and

(b) compile a record of proceedings consisting of all evidence including

documentary evidence tendered and submit the record of proceedings together with its report to the DB.

[27] We are of the considered view that the omitted documents are relevant and important to OKK's defence. If the omitted documents were not included in the DCs report, then these documents may not have been considered by the DC and certainly would not have been considered by the DB.

[28] It is quite clear and we so find that the omitted documents were never put before nor considered by the DB when arriving in its finding of liability against OKK as the DB was only provided with the incomplete DC report which contained material omissions.

[29] There was no explanation proffered by the DB and/or the Bar Council on the omitted documents from the DC report which we find are important to OKK's defence.

[30] Therefore, we are of the view that the failure of the DC to submit a complete report to the DB had compromised the decision making process of the DB.

[31] Our attention has been drawn to the case of *Ramasamy*. In that case, the Court of Appeal had the opportunity of interpreting r 24 of the former Legal Profession (Disciplinary Proceedings) (Investigating Tribunal and Disciplinary Committee) Rules 1994 ('the 1994 Rules'). The 1994 Rules are now replaced by the 2017 Rules. It is to be noted that r 24 of the 1994 Rules is in *pari materia* with r 18(12) of the 2017 Rules.

[32] The Court of Appeal held that strict compliance of r 24 of the 1994 Rules which is in *pari materia* with r 18(12) of the 2017 Rules is required.

[33] The Court of Appeal speaking through Justice Abang Iskandar Abang Hashim (as the learned PCA then was) held as follows:

> [29] *Strict compliance of r 24 is required*. The DC is not a final arbiter of the dispute created by the lodging of the complaint. It investigates the allegation by hearing witnesses acquainted with the complaint lodged and at the end of that exercise it recommends actions to be taken against the errant advocate and solicitor, depending on the outcome of the investigation. *Whatever its decision at the end of the investigation upon which its recommendations to the DB are premised, the DC must act on the evidence given by the various witnesses. Therefore, it is imperative that it keeps a proper record of what had transpired before it in terms of the testimonies of the witnesses*. The DC's recommendations are subject to review by the DB who will definitely be interested to see the evidence of witnesses in cases where it may not agree with the recommendations made by the DC. The High Court may also want to see how the

decisions are arrived at by the DB. *It will be extremely difficult to verify the challenges made by the aggrieved parties pertaining to what had transpired at the DC hearing when there is insufficient record of the proceedings to substantially reflect what had transpired during the DC proceedings, before the review or appeal tribunal*.

[30] ... *The significance of complying with r 24 cannot be overstated. Hence, the mandatory dictate in which r 24 has been couched in its choice of language that was employed therein*. There is much wisdom underlying that provision. The perils that may ensue, as a result of its noncompliance, in our considered view, have been clearly amplified in this appeal before us.

[31] *We found that there was non-compliance of r 24 and that it has thereby compromised the decision-making process of the DC*. The failure of the learned High Court judge to deal with this crucial issue in her grounds of judgment amounted to an error of law leading to a decision which in our respectful view, is untenable. That must require our appellate intervention.

[34] Further, we were referred to the case of *Ramanathan a/l Velu @ Murugai v Jeganathan a/l S Periasamy & Anor (Majlis Peguam Malaysia, intervener)* [2016] 4 MLJ 65; [2016] 4 MLRA 427; [2016] CLJU 304 where the Court of Appeal held as follows:

[8] In the instant case, we found substantial non-compliance of the rules by the DC and the subsequent enhancement of punishment by the DB *without the benefit of statutorily required documents under the rules had, in our view, compromised the integrity of the decision-making process*. (Emphasis added.)

[35] We were then referred to the judgment of the High Court in *Chou Ka Ping*, where the High Court held that the failure of the DC to record evidence and proceedings was an error of law in the decision-making process by the DC. The failure rendered the report of the DC to the DB a nullity. In the circumstances of the case, the order of the DB based on the DCs report was accordingly nullified and invalidated.

[36] The High Court held as follows:

[22] ... *Failure by the DC to record evidence and proceedings was, thus, an error of law in the decision making process by the DC. It rendered the report of the DC to the DB a nullity and thereby, the order of the DB based on the DC's report was on this ground too, accordingly, nullified and invalidated*. (Emphasis added.)

[37] The Bar Council, aggrieved by the decision of the High Court, appealed to the Court of Appeal. In dismissing the appeal and affirming the High Court's decision, the Court of Appeal in *Majlis Peguam Malaysia v Chou Ka Ping* [2015] 3 CLJ 28; [2015] 3 MLRA 21 refused to remit the matter to be heard by another properly constituted DC.

A **[38]** From the above cases, it is trite that a failure to record the notes of proceedings is fatal. In our instant appeal, we find that the entire defence adduced by OKK being the omitted documents were inexplicably left out in the DC report.

B **[39]** Given the above, we are of the considered view that it is a mandatory requirement under r 19 that the DC shall compile a complete record of proceedings consisting of all evidence tendered and submit the record of proceedings together with its report to the DB.

C **[40]** With respect we cannot agree with the Bar Council's contention that the omitted documents are not legally required to be included in the DC report.

D **[41]** It is our considered view that all evidence, referred to in r 19 of the 2017 Rules which necessarily includes the omitted documents must be part of the report which is to be compiled by the DC and transmitted to the DB.

E **[42]** We are in agreement with the learned HCJ findings that the failure of the DC to include the omitted documents in its report to the DB raised the question of whether the DB had the benefit of a full picture of the nature of the OKK's defence in arriving at its decision.

F **[43]** Hence, we view that the failure of the DC to submit a complete report ie by not including the omitted documents in the DC report to the DB rendered the DC report as invalid and a nullity.

CONCLUSION

G **[44]** Based on the aforesaid reasons, in view of the non-compliance with rr 18(12) and 19 of the 2017 Rules, we are of the considered view that there was procedural unfairness in the procedure before the DB.

H **[45]** We find no error or misdirection on the part of the learned HCJ in allowing the appeal and setting aside the DB order.

I **[46]** In the result, we see no reason to interfere with the findings of the learned HCJ. As such, we find no merit in the appeal. We unanimously decided to affirm the decision of the High Court and therefore dismissed the appeal. We made no order as to costs.

Appeal dismissed and High Court's decision affirmed.

Reported by Ashok Kumar